Stanley Furniture Company *and* United Electrical, Radio and Machine Workers of America (UE). Case 5-CA-12451

31 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 2 February 1982 Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a brief in support thereof and in response to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Robert Koth for statements made by Koth at a 10 March 1980[2] meeting of the Waynesboro, Virginia City Council and a 12 March bargaining session between the Union and the Respondent. The judge concluded that Koth's remarks were protected under the Act and that under these circumstances the Respondent could not lawfully discharge Koth pursuant to its progressive disciplinary system. We agree with the judge's conclusion that Koth's statements at the 12 March bargaining session constituted protected activity.[3] However, for the reasons discussed below, we find that the Respondent lawfully discharged Koth because of his remarks before the Waynesboro City Council.

As found by the judge, the Respondent maintained a progressive disciplinary system under which an employee was subject to discharge for receiving four warnings for minor disciplinary violations within a 12-month period. In applying this system, a major disciplinary violation was considered to be the equivalent of two minor violations and any combination of violations equaling four minor violations was sufficient justification for discharge.

The Respondent hired Koth 3 May 1979. In December 1979 Koth received a formal warning for tardiness, a minor disciplinary violation. On 6 February Koth received a formal warning for deliberately falsifying his employment application with the Respondent, a dischargeable offense which the Respondent treated as a major disciplinary violation. There is no dispute that the Respondent legitimately disciplined Koth for these infractions and that thereafter the commission of another disciplinary violation by Koth would subject him to discharge.

In January the Union and the Respondent began negotiations for a new collective-bargaining agreement. Koth participated in the negotiations as a member of the Union's bargaining committee. As found by the judge, these negotiations were protracted and difficult and, in early March, the Union's executive board decided to bring pressure on the Respondent by making a plea for assistance to the Waynesboro City Council. Koth and union vice president Calvin Johnson were selected by the Union to address the city council. In a meeting of the Union's executive board, Koth and Johnson were each given a general topic to be discussed. Koth was asked to cover the area of lost tax revenues due to the low wages paid to the Respondent's employees.

On 10 March Koth addressed the Waynesboro City Council. In the course of his remarks Koth discussed, among other matters, the low wages paid by the Respondent and the employees' resulting dependence on the city's welfare and assistance programs to make ends meet. Koth continued his remarks, saying:

> Also, there is the matter of the use of tax money by Stanley Furniture—the number of

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Although not alleged in the complaint, the judge found that the Respondent violated Sec. 8(a)(1) of the Act by Superintendent Mauzy's statement concerning employee and union chief steward Koth to employee and union president Hewitt, "I think you're letting one man lead you into a lot of serious trouble," following a lunchtime meeting of Hewitt, Koth, and other employees which the judge found to be activity protected under the Act. Hewitt testified that this remark by Mauzy was made immediately after Hewitt, Koth, and the other employees disregarded Mauzy's instruction to adjourn the meeting and return to work when the bell signaling the end of the lunch period sounded. Neither the General Counsel nor the Respondent explored this aspect of the incident on the record and the judge did not address Hewitt's testimony in reaching his conclusion that Mauzy's statement was directed at the employees' protected activity and was violative of the Act. Under the circumstances, we conclude that the issue was not fully litigated at the hearing and, accordingly, we reverse the judge's finding of such a violation.

[2] All dates are in 1980 unless otherwise indicated.

[3] In so doing, we rely on *Alfa Leisure*, 251 NLRB 691 (1980), and *Bettcher Mfg. Corp.*, 76 NLRB 526 (1948), and find it unnecessary to pass on his reliance on *Korn Industries v. NLRB*, 389 F.2d 117 (4th Cir. 1967), and *NLRB v. Frontier Homes Corp.*, 371 F.2d 974 (8th Cir. 1967).

> times that the Company calls for the fire department to bring their equipment. People who live around Stanley Furniture can bear witness to the fact that the fire department is called in there almost daily and nightly and we have, members of the Union, looked into when the last fire inspection was made and we get the run-around. So again, this is use of tax money. We are paying taxes out of one pocket and that tax, I think, is being used, I think, more than it should be used—is being used by the Stanley Furniture [sic] for fire protection when it could have a very thorough fire inspection and I would suggest with a representative of the Union to make sure that the hazards are corrected so that this tax dollar was protected.

As found by the judge, Koth's remarks "caused a stir" in the Waynesboro area for several weeks thereafter and resulted in a series of articles in the local newspapers and several inquiries to the Respondent from outsiders and other employers regarding Koth's statements and conditions in the Respondent's plant.

Shortly after Koth made his remarks, the Respondent contacted the Waynesboro fire chief and requested information on the number of fire calls made to the Respondent's plant. The fire chief replied 12 March and indicated that there had been six fire calls to the plant in the preceding 5-month period. Of these calls only three involved actual fires and these were minor fires in the sawdust handling equipment of the Respondent's plant which caused no property damage.

In the 12 March bargaining session mentioned above, a representative of the Respondent asked Koth if it were true that Koth attended the Waynesboro City Council meeting and said that the fire department was called to the Respondent's plant once a day. Koth replied, "Sometimes 3 times per day, at least once a day. Ask your neighbors."

On 14 March the Respondent issued a formal incident report to Koth for his remarks before the city council. Koth was charged with a major disciplinary violation for his failure to follow the Respondent's Rule 18 which proscribed "making false, vicious, or malicious statements about any employee, the Company, or its products." This violation put Koth over the limit allowed by the Respondent's progressive disciplinary system and he was discharged the same day.

The judge acknowledged that Koth's statements before the Waynesboro City Council were not directly related to the subjects about which the Union and the Respondent were then bargaining.[4] Nevertheless, the judge concluded that, because Koth's remarks were made in the context of an effort to enhance the Union's bargaining position, the Respondent could lawfully discharge Koth only on showing that his statements were deliberately and maliciously made, with knowledge of their falsity or with reckless disregard for the truth. The judge found that the Respondent had not met its burden and had shown no more than that Koth's statements were inaccurate. In reaching this conclusion the judge noted that the Respondent was itself uncertain as to the number of times the fire department was called to the plant and found it necessary to contact the fire chief for this information. The judge also noted that Koth's remarks in the 12 March bargaining session suggested that Koth actually believed that his earlier statement to the city council was true. The judge found therefore that Koth's remarks were made mistakenly and not maliciously or recklessly and that the Respondent's discipline of Koth was not justified under the Act. We disagree.

Koth's remarks, as found by the judge, were made in an effort to put public pressure on the Respondent. Koth's statements concerning the fire calls were only indirectly related to the subjects about which the Union and the Respondent were bargaining and clearly went beyond the scope of the topic for discussion given Koth by the Union's executive board. In addition, these statements of purported fact were blatantly false and there is no evidence that Koth made any attempt to determine the actual number of fire calls to the Respondent's plant before making his remarks. Further, the statements made by Koth were of such a nature as to be obviously damaging to the Respondent's reputation in the community and resulted in considerable negative publicity for the Respondent for several weeks after they were made. We are convinced after examining all the relevant evidence and circumstances that Koth's remarks were made maliciously, with deliberate intention to damage the Respondent or with reckless disregard for the truth. We reject the judge's conclusion that the Respondent's request for information from the fire chief and Koth's 12 March remark in the bargaining session evidence the merely mistaken nature of Koth's remarks. The record does not reveal that the Respondent's request to the fire chief was other than a prudent attempt to confirm information in anticipation of disciplining Koth, and Koth's 12

[4] At the time of Koth's statements the only issues remaining in the parties' negotiations concerned wage rates, pension benefits, and a dues-withholding clause in their contract.

March statement may as easily be viewed as evidence of Koth's tendency to disregard the truth as evidence of his belief in the truth of his statements. We conclude therefore that, even if Koth's initial statements to the Waynesboro City Council were protected, his remarks concerning the fire calls exceeded the bounds of protection of the Act and that the Respondent's later discipline of Koth for these remarks was lawful. Furthermore, it is clear that the Respondent would have discharged Koth under its progressive disciplinary system for his unprotected statements before the city council, even absent his other protected activity. Accordingly, we conclude that the Respondent's discharge of Koth was not violative of the Act.[5]

ORDER

The National Labor Relations Board orders that the Respondent, Stanley Furniture Company, Waynesboro, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating, maintaining, or enforcing an impermissibly broad rule which proscribes employee activity protected by Section 7 of the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the existing Rule 18 which proscribes certain employee conduct.

(b) Post at its plant in Waynesboro, Virginia, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER DENNIS, dissenting in part.

For the reasons set forth in the judge's decision, I would find that the Respondent violated Section 8(a)(1) and (3) by discharging employee Robert Koth. As the judge pointed out, the Respondent has not met its burden of establishing that Koth's remarks at the city council meeting were made maliciously with a deliberate intention to damage the Respondent or with reckless disregard for the truth. At most, the Respondent has shown that Koth's statements were inaccurate or exaggerated. In all other respects I am in agreement with my colleagues.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT promulgate, maintain, or enforce an impermissibly broad proscribed activity rule which interferes with employee rights protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our present Rule 18.

STANLEY FURNITURE COMPANY

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. On a charge filed on July 22, 1980, by United Electrical, Radio, and Machine Workers of America (UE) (Union), the complaint issued on September 12, 1980. The complaint alleges that Stanley Furniture Company (Respondent) has violated the Act because of statements made by company officials in the presence of employees, which statements constituted interference with and restraint and coercion of the employees and by its discharge of Robert Koth on March 14, 1980, for his membership in and activities on behalf of the Union. The complaint further alleges that Respondent violated the Act by telling employees in the shaper operator classification that if they did not drop their grievance with respect to their classification their labor grade would be lowered, pay rate cut,

[5] We agree with the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by maintaining its Rule 18. However, this finding does not affect our determination with regard to the Respondent's discharge of Koth pursuant to Rule 18, for there is no nexus between the legal deficiency in the rule and the statements for which Koth was discharged, which we have found to be malicious and within the scope of conduct which lawfully could be proscribed by the Respondent.

[6] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and their job reclassified. By formal amendment issued on June 17, 1981, it is alleged that the Respondent has violated the Act by maintaining and enforcing a rule disciplining employees for "making false, vicious, or malicious statements about any employee of the company or its products." Respondent's answer and the motion to dismiss denies these allegations. Respondent's motion to dismiss the amendment to the original complaint is denied as Respondent was given sufficient time to prepare a defense to the allegation and the allegation is closely tied to the ones made in the original complaint relating to the discharge of employee Koth.

A hearing was held on August 5 and 6, 1981, at Waynesboro, Virginia. Briefs were received from both the General Counsel and Respondent about September 21, 1981. Respondent filed a reply brief and the General Counsel filed a Motion to Strike in response thereto. The reply brief is not allowed by the Board's rules and, accordingly, the motion to strike is granted.

On the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent engages in the manufacture of furniture at a factory located at Waynesboro, Virginia. Respondent has annual gross revenues in excess of $250,000 and annually purchases goods and supplies valued in excess of $50,000 per year from points outside the State of Virginia. I find that Respondent is an employer within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio, and Machine Workers of America (UE), referred to as the Union, is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Allegations Relating to Threatening Statements Made By Company Officials to Employees and the Discharge of Robert Koth*

Robert D. Koth began his employment with Respondent on May 3, 1979, as a general helper. At the conclusion of his 60-day probationary period, he became an assembler installing bracing blocks on furniture. He held this position until his termination on March 14, 1980. Also at the conclusion of his probationary period, Koth became a member of Local 125 of the Union and progressed from shop steward to assistant chief steward by February 1980. In that period of time, Koth was involved in 13 grievances either as party or steward. In his capacity as assistant chief steward Koth also sat on the union executive board. The executive board functioned in all matters involving Local 125 and served also as the grievance committee, job evaluation committee, and negotiating committee. In this latter role as member of the negotiating committee, Koth took part in the collective-bargaining negotiations between Respondent and the Union which began in January 1980.

Koth's employment proceeded without incident until December 13, 1979, when he received a minor incident report for tardiness. Under Respondent's rules four formal warnings, minor in nature (within a 12-month period), will result in discharge. In applying the warning system, an incident that is classified as a major violation will be considered the equivalent of two minor violations and any combination of major and minor violations equalling four minors will be sufficient justification for a discharge.

In accordance with Respondent's normal procedures, Koth's supervisor, L. C. Lambert Jr., signed the incident report and administered the discipline. During the same period of time, Lambert was shown to have issued incident reports to three other employees who violated a tardiness rule.

In January 1980, Union Local President Sharon Hewitt observed Koth not installing bracing blocks on the furniture he was assembling at his station on the line. Bracing blocks are vital to the structural integrity of the furniture manufactured by Respondent and failure to install them results in a high incidence of future problems with the furniture. Hewitt testified that she mentioned this problem to Koth and was told by him that he was not installing bracing blocks because he had run out of such blocks and there were no more near his station. She suggested that Koth bring his problems in this regard to the attention of Supervisor Lambert. Hewitt testified that she overheard Koth's comments with respect to obtaining more blocks, to Lambert and another supervisor, Charles Veney, as the two supervisors were near Hewitt's work station when Koth approached. She stated that after telling Koth to return to his work station, Lambert remarked to Veney, "That guy has to go. He just keeps the place in a uproar all the time."

During February, Respondent's plant was the subject of an OSHA inspection lasting 3 days. Two officials of Respondent, Lou Spicer and an unnamed individual from the Stanleytown facility of Respondent, accompanied the OSHA inspector around the plant as well as Michael Caudill, a union steward. As the inspection group reached the cabinet room where Koth worked, he attempted to speak with the inspector but was told by Lambert to remain at his work station. Caudill testified he overheard a conversation between Spicer and Lambert in which Lambert said he would like to get rid of him. Spicer further testified that Lambert did not identify about whom he was talking. Lambert denies making any of the statements attributed to him.

In January Koth and Hewitt, along with chief steward Randall Wade, called a meeting of employees during the lunch hour in an attempt to solicit information concerning the termination of another employee, Ricky Kline. The meeting failed in its purpose and was dispersed by Charles Mauzy, a superintendent of Respondent. After the assembled employees returned to their respective work stations, Mauzy followed Hewitt to her work station and stated his displeasure with the entire matter. Telling Hewitt that he wanted to warn her, Mauzy ob-

served, "I think you're letting one man lead you into a lot of serious trouble." When Hewitt asked if Mauzy was referring to Koth, Mauzy answered, "I think you know who I mean."

It is contended that the remarks made by Lambert and Mauzy constitute violations of Section 8(a)(1) of the Act in that they tend to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under Section 7 of the Act. The General Counsel also urges that if such violations do not constitute independent violations of Section 8(a)(1) they do, at least, indicate an animosity toward employee Koth because of his union activities.

I cannot find that the statements attributed to Lambert constitute a violation of the Act. Lambert was the president of UE Local 125 prior to becoming a supervisor. He vigorously denies ever saying anything about Koth being a troublemaker or that he kept things in an uproar or that he would have to go. Other supervisors and rank-and-file employees of the Company testified that they had never heard Lambert make any such statements about Koth. Based on the demeanor and testimony of Lambert, the evidence introduced in the record as to the physical layout of the plant, which bears on Hewitt's ability to hear remarks made by Lambert, as well as the testimony noted above of the other personnel in the plant, I believe that Hewitt is mistaken and that Lambert is correct in his denial. With respect to the remark supposedly made about Koth on the day of the OSHA inspection, there is no showing whether the remark, if made, was about Koth or about the OSHA inspector. Again, I credit Lambert's denial that he ever made these statements about Koth.

The remarks attributed to Supervisor Mauzy are uncontradicted in the record, but again one must infer that they are directed against Koth. I find that these remarks do constitute a unfair labor practice, though one not related to the other alleged unfair labor practices at issue herein. The employees in the delegation seeking information about the firing of a fellow employee were engaged in a concerted activity protected by Section 7 of the Act. To threaten employees for engaging in such an activity is improper. Respondent offered no explanation of the actions of Supervisor Mauzy and thus it must be assumed that Hewitt's recital of such remarks is accurate, leading one to the conclusion that they were intended to be a threat.

On February 6, 1980, a major incident report was filed against Koth when Respondent discovered that he had deliberately falsified his job application. Rule 1 under "Intolerable Violations" proscribes "deliberate falsification in the application for employment." The record shows, and Koth admitted, that he deliberately falsified his application by not identifying the Stewart Warner Company in Chicago as his immediate prior employer. Instead, Koth listed what was actually a part-time job with another company. It is Koth's position that he feared that he would not secure employment with Respondent if he gave the true name of his previous employer and his salary at that place of employment. His previous salary was substantially more than that offered by Stanley.

Although this falsification clearly was deliberate, Stanley took into account Koth's tenure and, instead of discharging him as it had the right to do for this type of violation, issued a major violation (two disciplinary points).

As noted above, beginning in January, negotiations between Respondent and the Union were taking place. These negotiations were protracted, lasting through the period of Koth's discharge, and were evidently very difficult. The executive board of Local 125 determined various tactics to be used in an effort to bring pressure to bear on Respondent's bargaining position. These included lunchtime meetings, marches, and picketing outside Respondent's plant. In early March, the executive board decided to address a regular meeting of the Waynesboro City Council to bring additional pressure to bear on Respondent. The board generally discussed and identified topics to be addressed and determined that Koth and Calvin Johnson, the union vice president, both Waynesboro taxpayers, should speak at the meeting. Johnson was to inquire as to any guidelines city had on wages to assist the Union in its negotiations. Koth was to cover the area of tax waste due to low wages paid to Respondent's employees. Aside from the general discussion and identification of topics, the executive board provided no speeches or notes to either speaker. In the course of his remarks, Koth addressed the drain on the tax revenues and resources of Waynesboro citing examples such as the need for welfare assistance as well as more direct reference to the cost of fee services provided to Respondent's plant. Near the end of his presentation, evidently to impress the City Council about tax waste at the Stanley Waynesboro facility, Koth publicly stated that "People who live around Stanley Furniture can bear witness to the fact that the fire department is called in there almost daily and nightly . . ." A complete text of Koth's remarks in this regard follows:

> Also there is the matter of the use of tax money by Stanley Furniture—the number of times that the Company calls for the fire department to bring their equipment. People who live around Stanley Furniture can bear witness to the fact that the fire department is called in there almost daily and nightly and we have, members of the Union, looked into when the last fire inspection was made and we get the run-around, so again, this is use of tax money. We are paying taxes out of one pocket and that tax, I think, is being used, I think, more than it shoud be used—is being used by the Stanley Furniture for fire protection when it could have a very thorough fire inspection and I would suggest with a representative of the Union to make sure that the hazards are corrected so that this tax dollar is protected . . . [NOTE: The . . . indicate portion of the tape that was not clearly audible.]

Rupert Thompson, Stanley's area vice president, immediately contacted the Waynesboro fire chief in order to determine precisely how many fire calls had been made to the plant. Two days later the fire chief responded by pointing out that there had been only six fire calls

to the plant in the preceding 5 months. Of those six calls, the fire department was present only as a precautionary measure on two occasions and all the fires were of minor nature with no property damage. Koth's statement to the City Council caused a stir in the Waynesboro area. There were a series of articles in the local newspapers and both outsiders and employers got in touch with Thompson to inquire about conditions at the plant and to question what Koth had said. The matter stayed in the public eye for several weeks thereafter.

Two days later on March 12 the next bargaining session occurred. In the course of this rather heated session, a discussion of wages and wage related benefits took place between Koth, bargaining on behalf of the Union, and company representatives on behalf of the Company. Based on the minutes of this meeting, which are relied on by the parties as being reasonably accurate, Koth urged that because of the low wage scale in the Waynesboro plant, employee morale was very poor. He further argued that the employees need a wage increase in order to have an incentive to raise production. One of the company officials, evidently to make the point that employment at the plant was still attractive even at the existing wage scale, pointedly directed to Koth a comment to the effect that Respondent had definite proof that people had lied on their application in order to get the job at the plant. This was obviously a personal reference to Koth's falsification of his application form for which he had received a major disciplinary report. The official then mentioned production and quality at the plant to which Koth replied, "Yes, I enjoy the fact that I leave a few blocks off. You speed up the line, I can't do my job." The company official then called the statement sabotage and shortly thereafter the negotiating session ended.

On March 14, 1980, Koth was given two incident reports, one for the remarks at the City Council meeting and one for the comment at the bargaining session noted above. As both reports were considered "major" pursuant to Respondent's policy, Koth was informed that he was fired. Either of the major violations, the city council statement or the bargaining table statement, put Koth over the limit at which the Company discharges its employees.

It is Respondent's position that its reaction to Koth's bargaining table statement is based primarily on maintaining its image as a high quality furniture manufacturer. Stanley's success in the highly competitive market place comes from making excellent furniture. Its marketing and advertising efforts are all based on the fact that each Stanley product is of high quality. In order to insure quality day in and day out, Stanley has instilled in all of its employees that each of them is, in effect, a quality control inspector. Respondent contends that Koth's bargaining session statement undermines Stanley's quality control efforts, citing an increase in customer complaints during the period in which Koth said he was not installing blocks.

Although Koth's statement at the City Council meeting is not directly related to the subjects about which bargaining was taking place between the Company and the Union, it was made in the context of an effort to enhance the Union's position in the negotiations. In this context, it is not enough for Respondent to show that the reference to the fire department calls was merely false. Its burden is to establish that the statement was maliciously and deliberately made with knowledge of the falsity or at least reckless disregard therefor. I agree with the position of the General Counsel that Respondent's evidence of falsity indicates, at most, only an inaccuracy. Respondent evidently was not certain as to the number of times the fire department had called upon the plant, as it found it necessary to check with the fire department for this information. In fact, page 4 of the minutes of the bargaining session at which Koth made the alleged "sabotage" statement, strongly indicates that Koth still believed that his statement was true some 2 days after he made it. At that point in the bargaining session Koth was asked, "Is it true that you attended the City Council meeting and made the comment that the fire department was called to our plant once per day?" Koth responded, "Sometimes three times per day, at least once a day. Ask your neighbors."

I find from the evidence that Koth's statement was made mistakenly and not maliciously or recklessly. Thus, I find that Respondent's issuance of a major disciplinary violation to Koth for the City Council statement was not lawfully justified. *Tyler Business Services*, 256 NLRB 567 (1981); *American Hospital Assn.*, 230 NLRB 54 (1977); *Walls Mfg. Co.*, 137 NLRB 1317, 1319 (1962); *The Marlin Firearms Co.*, 116 NLRB 1834 (1956).

With respect to the so-called sabotage statement made at the bargaining session of March 12, I believe that Respondent has also failed to legally justify its issuance of a major disciplinary violation to Koth. The Board has long recognized that bargaining must be a frank exchange of views and participants must be able to speak freely and openly. Consequently, the Board and the courts have extended a high degree of privilege to statements made in the heat of bargaining sessions. I find it highly significant that Koth was issued the disciplinary report for making the statement he did, and not for leaving blocks off the Company's furniture in the manufacturing process. On the one occasion, when it came to the attention of Respondent's supervisor, Lambert, that Koth was not installing blocks as required by the Company's procedures, Koth was not disciplined in any manner. If leaving blocks off of furniture was as serious a violation of the Company's rules as Respondent asserted after the March 12 negotiating session, one must assume that Koth would have been severely disciplined or even terminated on the date when it came to the knowledge of management that he was violating company procedures in this regard.

Further, I cannot find that the statements made by Koth at the bargaining table on March 12 could, in any manner, damage Respondent's public reputation or its image as a manufacturer of quality furniture. The statement was made in a closed session and not given public currency until this proceeding was initiated. Taken in context of the bargaining session, Koth's statement, though misguided, is at least an understandable response to the argument taking place at the time of its utterence.

Accordingly, for the reasons stated, I find that Koth's remarks made at the bargaining session of March 12, are privileged and cannot lawfully form the basis for a disciplinary action by Respondent. *Korn Industries v. NLRB*, 389 F.2d 117 (4th Cir. 1967); *NLRB v. Frontier Homes Corp.*, 371 F.2d 974 (8th Cir. 1967).

Having found that Koth's statement made at the City Council meeting on March 10, 1980, and his statement made at the bargaining session of March 12 cannot lawfully provide the basis for the Company's discharge of Koth, I find that Respondent has engaged in an unfair labor practice and has violated Section 8(a)(3) of the Act.

B. *Allegations Relating to the Unlawfulness Per Se of Respondent's Rule 18*

Respondent's rule 18 under its "Major Violations" category proscribes: "making false, vicious, or malicious statements about any employee, the Company or its products." The General Counsel submits that the rule is invalid in two regards. On its face it makes no attempt to define the area within which it seeks to regulate employee speech and further, by its own construction, the rule does not distinguish between the false, the vicious, and the malicious, thereby including within the reach of its prohibition the merely false statement. The Board rule enforced by the courts is that within the area of concerted activity, false, and inaccurate employee statements are protected, so long as they are not malicious. *American Cast Iron Pipe Co.*, 234 NLRB 1126, and cases cited therein. In *American Cast Iron*, the Board found the employer's rule similar to rule 18 herein,[1] to be per se invalid, adopting without modification the decision of the administrative law judge. In enforcing the Board's Order, the Eighth Circuit stated,[2] "We agree with the Board that a major flaw in both rules is that they proscribe 'false' as well as 'vicious or malicious' statements." Punishing employees for distributing merely "false" statements fails to define the area of permissible conduct in a manner clear to employees and thus causes employees to refrain from engaging in protected activity.

If disloyalty is the problem the petitioner seeks to address, it must do so directly rather than through an impermissibly broad rule.

I find that Respondent's rule is impermissibly broad, and that it constitutes a per se violation of Section 8(a)(1) of the Act, and must either be rescinded or rewritten to conform to Board policy.

C. *Allegations Relating to Downgrading the Pay Grade of Shaper "A" Operator Employees*

The contract between the Union and the Respondent makes provisions for a joint committee to reevaluate jobs and their pay scales. In the instant controversy, the Union did not make use of these provisions but instead filed a grievance in early 1980, in which it was alleged that the Shaper "A" jobs should carry a higher pay grade. The grievance proceeded through the first and second steps. Incident to the third step of this process, Rupert Thompson and others in management met twice with union steward Phil Allen and the shaper operators. The first of such meetings occurred on March 6 and included the grievance committee and two or three of the shaper operators who would be involved in a grade change. At this meeting, utilizing contractually established criteria, the committee went through a test exercise in reevaluating the job in question. The result of this exercise was that the job would drop from a grade 10 to a grade 8.

After the March 6 meeting, some of the shaper operators inquired of Thompson and one of his foreman as to what was happening with the proposed job reclassification. In response to these questions, Thompson got together certain of his management team, all the shaper operators, and the union steward Phil Allen. According to Thompson, whose testimony I find as being completely credible, he asked the shaper operators to make up their minds whether they wanted their job reclassified or not. He further pointed out that the job had a chance of going up in classification or going down in classification and then informed employees that management was going to leave the room and when the shaper operators had made up their minds let him know of their decision. Shortly thereafter, the union steward advised him that the shaper operators did not want to reevaluate their job.

The next morning, however, Thompson was informed that there had been a change in position and that the job should be reevaluated. As a result of the reevaluation, the job classification was reduced from grade 10 to grade 9. Also, according to the contract between the Union and the Respondent, those employees presently employed as shaper operators were "red circled." Their pay continued at the grade 10 level and no employees' pay was cut as a result of the reevaluation.

There is no evidence in the record that the Union, through its steward Phil Allen or otherwise, complained about the meeting of management with Allen and the entire shaper-operator crew.

Based on the evidence adduced in this record, I cannot find that the meeting was an attempt to bypass the Union, or to intimidate, or to threaten the affected employee. If anything, in light of the "exercise" in reevaluation which occurred at the third-step grievance meeting, it was merely an attempt to let all the affected employees know that a real possibility existed that the ultimate result of the grievance would be a reduction in the job classification. I find that the Respondent did not violate Section 8(a)(1) or (5) of the Act by virtue of its meeting with the shaper operators or by its actions in regard to the reclassification of the shaper operators' job.

THE REMEDY

As I have found that Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act by the threat of its supervisor Mauzy in response to a protected concerted activity on the part of certain of Respondent's employees, I shall

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[1] The rule therein read, "making false, vicious, or malicious verbal statements concerning any employee, the Company, or its products and methods of manufacturing."

[2] *American Cast Iron Pipe Co. v. NLRB*, 600 F.2d 132, 136 (8th Cir. 1979).

recommend that it cease and desist therefrom. Additionally, having found that Respondent has engaged in an unfair labor practice by promulgating and enforcing an impermissably broad proscribed activity rule, I shall recommend that the rule be rescinded.

I have found that by discharging employee Robert Koth because of his protected activity during negotiations between the Union and Respondent, Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. I recommend that Respondent be required to offer Robert Koth immediate and full reinstatement to his former position, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges and to make him whole for any loss he may have suffered by reason of the discrimination against him. All backpay due under the terms of this order shall be computed, with interest, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[3]

On the basis of the above findings of fact and the entire record in this case, I make the following

[3] See generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Stanley Furniture Company is an employer engaged in commerce within the meaning of Section 2(5), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By the act of Supervisor Mauzy threatening certain of Respondent's employees for engaging in protected concerted activity, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) of the Act.

4. By promulgating and enforcing an impermissibly broad proscribed activity rule, Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Sections 8(a)(1) and 2(6) of the Act.

5. By discharging its employee Robert Koth, one of the Union's bargaining agents in negotiations between Respondent and the Union, for Koth's statements in the course of negotiations, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (3) and 2(6) of the Act.

6. Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) or (5) of the Act by the statements and actions of its supervisor Lambert nor by its action in regard to the reclassification of the shaper operators position.

[Recommended Order omitted from publication.]